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22442	7590	01/07/2009		
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			EXAMINER BOYER, RANDY	
			ART UNIT	PAPER NUMBER
			1797	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment

1. Examiner acknowledges Applicant's response filed 29 September 2008 containing amendments to the claims and remarks.
2. Claims 71-89 are pending. Claims 86-89 are newly added.
3. The previous rejections of claims 71-85 are withdrawn in view of Applicant's amendment to the claims.
4. Claims 71, 73-77, and 80-87 are allowed. Likewise, allowable subject matter is indicated with respect to claims 72, 78, 79, 88, and 89.
5. New ground for rejection of claim 72, necessitated by Applicant's amendment to the claims, is entered under 35 U.S.C. 112, first paragraph. Likewise, newly added claim 88 is rejected under 35 U.S.C. 112, second paragraph. In addition, newly added claim 89 is objected to. The objection and rejections follow.

Claim Objections

6. Claim 89 is objected to for lack of antecedent basis in the claim.
7. With respect to claim 89, the claim recites "the bitumen and asphaltenes" in line 3 of the claim. There is insufficient antecedent basis for such limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 72 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

11. With respect to claim 72, Examiner notes that Applicant has amended the claim to recite, in relevant part, “wherein the at least part of the clarified heated water is not subjected to solvent recovery by distillation after the second subjecting step and before the recycling step.” Examiner interprets such language as a negative limitation or exclusionary proviso support for which is not found in Applicant’s disclosure as originally filed. Any negative limitation or exclusionary proviso must have basis in the original disclosure. See MPEP § 2173.05(i). Moreover, the mere absence of a positive recitation cannot serve as the basis for an exclusion. See id.

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12. Claim 88 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. With respect to claim 88, the claim recites: "The method of claim 86, wherein the subjecting step is performed by pressure moderation" (emphasis added). In this regard, Examiner notes that claim 86 recites two separate "subjecting" steps. Thus, it is unclear which (or both?) subjecting steps Applicant intends to refer to by reciting "the subjecting" step being performed by pressure moderation.

Allowable Subject Matter

14. Claims 71, 73-77, and 80-87 are allowed.

15. Claim 72 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, first paragraph, set forth in this Office Action.

16. Claim 88 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office Action.

17. Claim 89 would be allowable if rewritten or amended to overcome the objection set forth in this Office Action.

18. Claims 78 and 79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

19. The following is Examiner's statement of reasons for allowance:

With respect to claim 71 (from which claims 72-85 depend), none of the prior art references previously cited disclose or suggest a process for treating a diluted tailings component comprising, in relevant part, “subjecting the whole diluted tailings component to a solvent recovery separation by pressure moderation.”

With respect to claims 86 (from which claims 87 and 88 depend) and 89, none of the prior art references previously cited disclose or suggest a process for treating a diluted tailings component comprising, in relevant part, “subjecting at least most of the diluted tailings component to a solvent recovery separation to recover substantially all of the solvent in the diluted tailings component as a separate recovered solvent component and produce a solvent recovered tailings component containing water, solids, precipitated asphaltenes and residual bitumen and solvent; and thereafter subjecting the solvent recovered tailings component to gravity separation to separately produce an overflow stream of clarified heated water and an underflow stream mainly comprising solids, precipitated asphaltenes and water, the underflow stream comprising most of any residual solvent, solids, and precipitated asphaltenes in the solvent recovered tailings component.”

Conclusion

20. Applicant’s amendment necessitated the new ground of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Boyer whose telephone number is (571) 272-7113. The examiner can normally be reached Monday through Friday from 8:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn A. Caldarola, can be reached at (571) 272-1444. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

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RPB

/Glenn A Caldarola/

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